

TRW-United Greenfield Division and International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, UAW, Cases 10-CA-15362, 10-CA-15515, and 10-RC-11258

February 10, 1982

DECISION, ORDER, AND DIRECTION

BY CHAIRMAN FANNING AND MEMBERS
JENKINS AND ZIMMERMAN

On June 3, 1981, Administrative Law Judge Peter E. Donnelly issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief and the Charging Party filed a brief in response.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings,¹ find-

¹ At the hearing, the Administrative Law Judge admitted into evidence C.P. Exh. 1. However, this document was inadvertently placed in the rejected exhibits files. We hereby, *sua sponte*, correct this inadvertent error.

² Respondent asserts that the Administrative Law Judge's resolutions of credibility, findings of fact, and conclusions of law are the result of bias. After a careful examination of the entire record, we are satisfied that this allegation is without merit. There is no basis for finding that bias and partiality existed merely because an administrative law judge resolved important factual conflicts in favor of the General Counsel's witnesses. As the Supreme Court stated in *N.L.R.B. v. Pittsburgh Steamship Co.*, 337 U.S. 656, 659 (1949), "[T]otal rejection of an opposed view cannot of itself impugn the integrity or competence of a trier of fact." Furthermore, it is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

In fn. 20 of his Decision, the Administrative Law Judge refers to the first-shift dispatchers as supervisors. However, the status of these individuals was not litigated, and is not at issue, in this proceeding. This inadvertent error is insufficient to affect our decision. Furthermore, in agreeing with the Administrative Law Judge's finding that second-shift dispatchers Daughtry, Williams, and Vincent are neither supervisory nor managerial employees, we do not rely on the fact that the first-shift dispatchers voted without challenge in the November 15, 1979, election.

³ The Administrative Law Judge recommended that Objection 1 be overruled, based on his crediting of International Representative Echols' testimony that he did not misrepresent to employees that employees represented by the Union at Respondent's Putnam plant were covered by a dental plan. In adopting his recommendation, we find without merit Respondent's contention that the Administrative Law Judge erroneously precluded it from presenting certain evidence on this issue since we conclude that Respondent was not prejudiced by that ruling. Thus, we find that, even if Respondent established, consistent with the affidavits introduced into evidence and relied on in its offer of proof, that certain employees made statements to other employees attributing such a misrepresentation to Echols, such evidence would be insufficient to warrant setting aside the election. In this regard, we note the hearsay nature of the evidence and that Respondent did not allege that the employees making such statements were agents of the Union.

In adopting the Administrative Law Judge's recommendation that Objection 2 be overruled, we find it unnecessary to rely on his alternative finding that, even if employee Pruett's version of Echols' statement to

ings,² recommendations,³ and conclusions⁴ of the Administrative Law Judge, and to adopt his recommended Order, as modified herein.⁵

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, TRW-United Greenfield Division, Evans, Georgia, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 2(a):

"(a) Offer to David Daughtry immediate and full reinstatement to the job he would have had but for his unlawful demotion or, if such job no longer exists, to substantially equivalent employment, and make him whole for any loss of pay which he may have suffered as a result of the discrimination practiced against him, in the manner set forth in the section of this Decision entitled 'The Remedy.'"

2. Insert the following as paragraph 2(b) and re-letter the subsequent paragraphs accordingly:

"(b) Offer to William Cummins immediate and full reinstatement to his former job or, if such job no longer exists, to substantially equivalent employment, and make him whole for any loss of pay

employee Walton is credited, any threat contained in that statement related to events which could not occur until after the election and thus would not be objectionable. We further find no merit to Respondent's contention that the Administrative Law Judge erred by refusing to allow testimony concerning alleged misconduct by employees not alleged to be agents of the Union since we conclude Respondent was not prejudiced thereby. In this regard, we conclude that Respondent's offer of proof, even when considered in conjunction with Echols' statement to Walton, does not present facts sufficient to establish that an atmosphere of fear and coercion existed which would warrant setting aside the election.

⁴ In adopting the Administrative Law Judge's conclusion that Respondent violated Sec. 8(a)(3) and (1) of the Act by demoting Daughtry and Williams, we find it unnecessary to rely on his findings that there appears to have been no legitimate business reason for Respondent's February 15, 1980, reorganization of the production control department and that the reorganization was functionally purposeless. Rather, we find that, even assuming, *arguendo*, that the reorganization was for valid business reasons, Respondent has not demonstrated that Daughtry and Williams would have been selected for demotion absent their union activities. *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

⁵ In his recommended Order the Administrative Law Judge required Respondent to make Williams whole for any loss of pay which he may have suffered as a result of his unlawful demotion, but did not order Respondent to restore Williams to the position he would have had but for its unlawful action. In adopting this portion of the Administrative Law Judge's recommended Order, we note that Williams subsequently left Respondent's employ and that there is no allegation that he did so as the result of any unlawful action by Respondent.

We shall modify the Administrative Law Judge's recommended Order to provide that Respondent offer Daughtry reinstatement to the position he would have had but for his unlawful demotion or, if such position no longer exists, to substantially equivalent employment.

Member Jenkins would provide interest on the backpay award in accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

which he may have suffered as a result of the discrimination practiced against him, in the manner set forth in the section of this Decision entitled "The Remedy."

3. Substitute the attached notice for that of the Administrative Law Judge.

IT IS FURTHER ORDERED that the objections to the election conducted in Case 10-RC-11258 on November 15, 1979, be, and they hereby are, overruled.

IT IS FURTHER ORDERED that the challenges to the ballots cast by David Daughtry, Richard Williams, and Leo Vincent in the election conducted in Case 10-RC-11258 on November 15, 1979, be, and they hereby are, overruled.

DIRECTION

It is hereby directed that the Regional Director for Region 10 shall, within 10 days from the date of this Decision, Order, and Direction, open and count the ballots cast by David Daughtry, Richard Williams, and Leo Vincent in the election conducted in Case 10-RC-11258 on November 15, 1979, and thereafter prepare and cause to be served on the parties a revised tally of ballots, upon the basis of which he shall issue the appropriate certification.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT demote our employees thereby discriminating in regard to their hire and tenure of employment in order to discourage membership in International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, UAW.

WE WILL NOT suspend or discharge our employees, thereby discriminating in regard to their hire and tenure of employment in order to discourage membership in International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, UAW.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights under the National Labor Relations Act.

WE WILL offer to David Daughtry immediate and full reinstatement to the job he would have had but for his unlawful demotion or, if such job no longer exists, to substantially equivalent employment, and make him whole

for any loss of pay which he may have suffered as a result of the discrimination practiced against him, plus interest.

WE WILL offer to William Cummins immediate and full reinstatement to his former job or, if such job no longer exists, to substantially equivalent employment, and make him whole for any loss of pay which he may have suffered as a result of the discrimination practiced against him, plus interest.

WE WILL make Richard Williams whole for any loss of pay which he may have suffered as a result of the discrimination practiced against him, plus interest.

TRW-UNITED GREENFIELD DIVISION

DECISION

STATEMENT OF THE CASE

PETER E. DONNELLY, Administrative Law Judge: The charge in Case 10-CA-15362 was filed on January 14, 1980, by International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, UAW, herein called the Charging Party or the Petitioner. A complaint thereon was issued on February 26, 1980. The charge in Case 10-CA-15515 was filed by the Charging Party on February 21, 1980. The two cases were consolidated and a complaint, order consolidating cases, and notice of hearing was issued on March 28, 1980, alleging that TRW-United Greenfield Division, herein called the Employer or Respondent, violated Section 8(a)(1) and (3) of the Act. Answers to these complaints were timely filed.

As to the representation case (10-RC-11258), a petition was originally filed by the Petitioner on October 18, 1977, and an election held on December 16, 1977. Pursuant to a Decision and Order of the National Labor Relations Board dated September 28, 1979,¹ growing out of certain unfair labor practice charges and objections to the election filed by the Union, the election was set aside and subsequently a second election was conducted on November 15, 1979.² The Employer challenged three of the ballots cast in this election.³ Objections to the election were filed by the Employer. The challenged ballots are sufficient in number to affect the results of the election.⁴ As a result of these objections and challenges the Board ordered, on June 3, 1980, that a hearing be held to resolve; the challenged ballots; Employer's Objections 1 and 2; and remanded the matter to the Regional Director for that purpose. These matters were consolidated with

¹ 245 NLRB 1135.

² The numerous unfair labor practices found by the Board consisted of pre-election threats, interrogations, and solicitation by Respondent among the same employees involved herein, at the same plant. The Board's Decision and Order was affirmed by the U.S. Fifth Circuit Court of Appeals. *TRW-United Greenfield Division*, 637 F.2d 440 (1981).

³ The three employees challenged were the night-shift dispatchers. The day shift dispatchers voted without challenge.

⁴ There were approximately 434 eligible voters. The tally of ballots shows that 209 votes were cast for and 209 votes cast against the Union.

the allegations raised by the consolidated complaints in Cases 10-CA-15362 and 10-CA-15515. A hearing was held thereon before me on July 28, 29, 30, 31, and August 1, 18, 19, 20, and 21, all in 1980. Briefs have been timely filed by the General Counsel, Respondent and the Charging Party which have been duly considered.

FINDINGS OF FACT⁵

I. THE EMPLOYER'S BUSINESS

The Employer is an Ohio corporation with an office and place of business located at Evans, Georgia, where it is engaged in the manufacture of metal drills and related tools. During the past calendar year, the Employer sold and shipped from its Evans, Georgia, facility finished products valued in excess of \$50,000 directly to customers located outside the State of Georgia. The complaints allege, the Employer in its answer admits, and I find that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, the answer admits, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The consolidated complaints allege that Respondent violated Section 8(a)(3) and (1) of the Act by withholding a portion of a wage increase from employee David Daughtry; thereafter demoting Daughtry and employee Richard Williams; suspending and discharging Daughtry; and unlawfully discharging employees Kim Cummins and William Cummins.

A. Facts

1. Supervisory status of David Daughtry, Richard Williams, and Leo Vincent

At all times relevant herein, prior to the election on November 15, 1979,⁶ Respondent employed employees classified as dispatchers on the first two shifts. The six dispatchers on the first shift were under the immediate supervision of Rockefeller,⁷ production control supervisor, who reported to Wagner, production control manager. The three dispatchers on the second shift, Daughtry, Williams, and Vincent, worked from 3 p.m. to

11:30 p.m. and were supervised directly by Wagner. After Wagner left the plant, normally at or about 6 p.m., the three dispatchers either left problems unresolved until the following day or contacted Wagner when necessary on the more important matters.

It was the basic function of dispatchers to expedite the flow of cutting tools through the production process. These tools consisted basically of drills, reamers, and end mills. This production process began with an order and accompanying "travel card," normally a computer print-out made by the Industrial Engineering Department designating the type of tool, number, sequence of the operations to be performed on the tools, and the machines to be utilized therein. As to certain "special" or "hot" orders there would also appear the name of the customer and "hard date" or delivery date to the customer. Each of the dispatchers was responsible for a certain number of operations in the total sequence, and it was his responsibility to see that the orders were moved after the completion of an operation to the next operation in the process.

The dispatchers normally moved the tools from one operation to the next with the use of an electric pallet jack, following the sequence as they appeared on the "travel card." Some smaller orders were hand carried. When tools were brought to the next operation they were normally placed in receiving racks. Machine operators then performed their work on the tools, and the order was then taken by the dispatcher to the next operation for processing in similar fashion. Daughtry testified that he spent 90 percent of his time moving tools. Williams testified that he spent about 85 percent of his time so employed.⁸ Respondent's witnesses testified in this regard, and their estimates ranged from 25 percent to 50 percent of the dispatchers' time so engaged. In this regard I find the testimony of Daughtry and Williams to be more credible, particularly since they worked without supervision physically present for a substantial period of time on the second shift, and Respondent's witnesses were not in the best position to observe how their time was spent.

With respect to the assignment of work to machine operators, it is not disputed that inasmuch as certain machine operators obtained their work from certain racks, it was possible for the dispatchers to determine which machine operator worked a particular order by placing that work in his rack. Indeed, it was one of the duties of the dispatchers to see to it that work orders were distributed among the racks with the view towards expediting the work. In situations where certain racks were overloaded and the work backed up, the dispatcher could and did move the work to other racks where it could be processed more expeditiously by other machines and other operators. Dispatchers could also combine jobs to be performed by certain machines in order to avoid setup time which would be necessary if additional machines were used; however, the decision as to which operators operated which machines, and which machines

⁵ There is conflicting testimony regarding some of the allegations of the complaints as well as the objections. In resolving these conflicts, I have taken into consideration the apparent interests of the witnesses. In addition I have considered the inherent probabilities, the probabilities in light of other events; corroboration or lack of it; and consistencies or inconsistencies within the testimony of each witness, and between the testimony of each and that of other witnesses with similar apparent interests. In evaluating the testimony of each witness I rely specifically upon his or her demeanor and have made my findings accordingly. And while apart from considerations of demeanor, I have taken into account the above-noted credibility considerations, my failure to detail each of these is not to be deemed a failure on my part to have fully considered it. *Bishop and Malco Inc. d/b/a Walker's*, 159 NLRB 1159, 1161 (1966).

⁶ All dates refer to 1979 unless otherwise indicated.

⁷ It was stipulated at the hearing that Richard Wagner, Bobby Reese, Gordon Miller, Roy Paschen, James Wesley, Tom Shepherd, Tom Rockefeller, Jim Threet, Ron Zimmer, and Nick Hagler are supervisors.

⁸ Vincent was not called as a witness at the hearing.

would operate, was a decision made by the production foreman, not the dispatchers.

As noted above, the "travel card," which is done by industrial engineers, determines the sequence of production operations in processing the tools. The dispatchers do not make those determinations, and their authority to vary or modify this sequence is limited to the expediting methods set forth above. Respondent also offered testimony to show that dispatchers have the authority, with respect to some special or priority orders, to bring the order directly to a machine operator and direct that operator to perform the work, and further, that the machine operator is required to obey such directions under penalty of discipline. In my opinion the record, viewed in its entirety, does not support this contention. In those extraordinary situations, where expeditious treatment of an order was called for, the dispatchers had the authority to request the machine operator to work on the order, but that if the machine operator refused to accede to that request, the dispatcher had no authority to demand that the work be done. Indeed, nothing in this record discloses that the dispatchers had any authority whatever over the production process, *per se*, but had the responsibility only to move the orders, and to posture them so as to expedite the production process.

While it is true that a priority order could be processed by a machine operator and moved out of the department without the knowledge of the production foremen, the foremen were routinely told of such processing and it remained a prerogative of the machine operator to decline a dispatcher's request to perform such work, and when disagreement arose, it was necessary to have the matter resolved by consultation with the responsible production foremen or the intervention of higher authority.

With respect to the matter of overtime, it appears that the dispatchers sometimes recommended that overtime be worked in order to reduce backlogs. However, they do not have the authority themselves to decide that overtime be worked. While they could recommend that overtime be worked, the decision was made by higher supervision.

There also appears in evidence certain documents describing and defining the dispatcher classification. The dispatchers' functions are outlined in Respondent's Standard Operating Procedures (Resp. Exh. 2), and deal primarily with the dispatchers' role in the processing of tools, beginning, *inter alia*, with the receipt of the "travel card" and movement of the tools through the production process. While these procedures suggest a degree of cooperation and consultation with production foremen, nothing therein assigns authority to the dispatchers to direct the work of production employees. Similarly, a dispatcher job description (G.C. Exh. 17) details the responsibilities of the dispatchers in processing tools to ensure maximum expeditious flow through the production process, but does not clothe dispatchers with authority to direct the work activity of any other employees.

Otherwise it appears that the dispatchers, while salaried, are required to sign in and out, and do not have the authority to hire, fire, or discipline employees.

As to the issue of dispatchers performing managerial functions, it appears that night shift dispatchers, by use

of "speed memos," call to the attention of day-shift supervision, certain expediting difficulties encountered by them, often in situations where work has backed up, and recommending corrective action. The record also discloses that Williams was assigned to draft written procedures for the elimination of backlogs in the concentricity area, and that a modified version of this procedure was eventually utilized for a time.

2. Unfair labor practice allegations involving David Daughtry and Richard Williams

a. *Withholding of wage increase from Daughtry*

On January 1, 1980, annual wage increases were made to the dispatchers. Daughtry received a wage increase of 6.6 percent. Mike Gregory received a wage increase slightly lower. Williams received a wage increase of 12 percent. Leo Vincent and Larry Pruett received increases of 10 percent. Wagner testified, and the record reflects, that Wagner was aware that both were union adherents. Wagner also testified that Daughtry's smaller raise was the result of his less-than-satisfactory performance in being "rather lazy" and that Williams was given a larger increase because he was making less and did a little better job than Daughtry.

b. *Demotion of David Daughtry and Richard Williams and the suspension and discharge of Daughtry*

For several weeks prior to the election on November 15, 1979, both Daughtry and Williams wore to work, on a daily basis, T-shirts and hats bearing the UAW insignia. About a month prior to the election, in Wagner's office, Daughtry, Williams, and Vincent were all advised by Wagner that it was not in the best interests of the Company for them to be discussing the Union on company time, that if they wanted to organize, it should be done on their own time. Daughtry explained why he supported the Union, and Wagner asked them all to reconsider.

The day prior to the election, Respondent gave a 15-minute video-tape presentation to employees showing Daughtry wearing a "Yes" button on his hat. On the day of the election, Daughtry, Williams, and Vincent were called to the production office where they were detained some 20 to 30 minutes prior to being released to vote. Supervisors Hagler, Zimmer, Rockefeller, and Wagner were there and observed Daughtry and Williams wearing UAW T-shirts.

After the election, both Daughtry and Williams continued to actively support the Union by distributing union authorization cards, and wearing UAW T-shirts and hats at the plant in full view of supervision.

Prior to the reorganization of the production control department on February 15, 1980, the hierarchy of the production control department consisted of Wagner, production control manager, who reported to Hagler, material manager. Hagler, in turn, reported to Zimmer, manager of manufacturing, who reported to Operations Manager Rowland Springstroh. Under Wagner was Production Control Supervisor Rockefeller. There were two employee classifications at this time—six dispatchers and

three production control clerks working on the first shift, and three dispatchers on the second shift; i.e., Daughtry, Vincent, and Williams.

Wagner decided to "reorganize" the production control department effective on February 15, 1980, "due to changing business conditions⁹ and manufacturing operating methods." Wagner and Rockefeller retained their titles. However, the classification of dispatcher was eliminated. Doolittle, Pruett, and Tuttle, previously dispatchers, were promoted to "production coordinators," given pay raises, with supervisory responsibility for those "material handlers" previously designated as dispatchers. Daughtry, Williams, and Gregory were designated "material handlers." Previously salaried, their salaries were translated to an hourly rate, and they were placed in a "Labor Grade" for pay purposes. Since their new hourly rate exceeded the hourly rate for the Labor Grade, these hourly rates were "red circled," meaning that they would receive no wage increases until the wage rate for the Labor Grade reached their hourly rate. Daughtry, Williams, and Gregory were the only "material handlers" given "red circle" rates. Tuttle was assigned to supervise Daughtry and Williams on the second shift.¹⁰ A total of five dispatchers were reassigned as "material handlers," Daughtry, Williams, and Gregory and also Daniel Johnson and Norman Green, both hired about February 5, 1980.

Wagner testified that the selections for "production coordinators" were made by him, and that they were based mostly on his personal evaluation of the work performance of those involved. Wagner testified that he normally worked until about 6 p.m., which allowed him to personally evaluate their work. Information from supervision also played a part, according to Wagner. Among the dispatchers available for selection, Wagner states that he had ruled out Gregory from the beginning as not having "total knowledge," the same being true of new employees Green and Johnson. Gregory's prior 1979 rating shows him as a mediocre performer. As to Daughtry, the record shows he had previously worked as a "production expeditor," a somewhat more responsible position than dispatcher. Daughtry was also attending college and Williams had a college degree. It also appears that Daughtry had previously been considered, in the first part of 1979, for promotion to a foreman position and was advised by Miller, although he was not selected, that he was rated highly and would be considered for future openings.

On February 15, 1980, the employees of the production control department were called by Wagner to a meeting in the Engineering Conference room to announce the changes set out above. Daughtry asked to leave, and when Wagner asked him to stay, he turned his chair to the wall.

After this meeting Daughtry asked to see Zimmer, and did so in Zimmer's office between 5 and 5:30 p.m. Williams was also present. Daughtry and Williams complained to Zimmer about not having been promoted in

view of their superior credentials. Zimmer replied that that was a management decision, reviewed by him, and he saw no reason to make changes.

Later in the day, about 6:30 p.m., at Wagner's request, a meeting was held with Daughtry and newly made supervisor, Tuttle. Wagner testified that he asked Daughtry if he understood that his pay was going to be "red circled," and he replied "Yeah." He also asked if Daughtry understood that Tuttle would be his supervisor and Daughtry did not respond. According to Wagner, he refused several times to answer and when told by Wagner that he needed a "yes" or "no," Daughtry replied "yes or no." Wagner again said that he needed an answer and Daughtry again refused to respond, whereupon Wagner told him that he was suspended pending an evaluation by the employee relations department. He suggested that Daughtry go downstairs, get his stuff, and leave the plant.

According to Daughtry, he told Wagner that he could not comprehend Tuttle being his supervisor but told him "Okay, if you say so," and when asked several times if he understood his "red circle" rate, he responded only, "I heard you." Wagner said he wanted a "yes" or "no" response and Daughtry replied, "I told you that I heard you." Wagner then told him that Bobbie Reese would be in touch with him on Monday, and that he was being suspended for insubordination.¹¹

At this time, Daughtry left the office and went down the stairs to the production area where he approached Williams. Daughtry testified that he asked Williams to return \$4 that Williams owed him to buy gas to get home. During the conversation, Daughtry told Williams that he had been suspended and Williams asked him why. Whereupon Wagner, who had been following behind, took Daughtry by the elbow telling him to leave and that he had been suspended. Daughtry testified that he became angry and said to Wagner, "If you ever touch me again, m— f—, I'll beat your head in." And "You chicken—, son-of-a-bitch, you've picked at me enough. Don't ever touch me again." Wagner testified that he only "touched" Daughtry on the arm. While the details of this incident are not entirely clear or consistent, it is clear that Daughtry used profanity in addressing Wagner and William. After the incident Daughtry got his coat and left.

On the following Monday morning, February 18, 1980, Wagner referred the matter of Daughtry's suspension to Reese for investigation and disposition. On the same day at or about 3:45 p.m., not having heard from Reese, Daughtry called Reese to inquire of his status. He was told by Reese on the telephone that, as a result of the investigation, he was being discharged. Daughtry then told Reese that he had some personal things at the plant he would like to get, and was told by Reese that he could come in and get them, which he did later that day.

Reese in his testimony does not mention any telephone conversation, only a meeting at his office; however, I credit Daughtry's un rebutted testimony that the tele-

⁹ The nature of the "changing business conditions" as they affected the production control department were never defined.

¹⁰ Vincent was given the newly created title of "Production Planner/Scheduler" (G.C. Exh. 8).

¹¹ Tuttle's account generally corroborates Wagner, and I credit that version. Whatever the exact words, it is clear that Daughtry, even by his own account, refused to provide a direct response.

phone conversation did take place and conclude that he was discharged at that time. Reese apparently places the discharge as taking place during the visit by Daughtry to his office when Daughtry came in to the plant shortly after the telephone conversation. Reese testified that Daughtry was discharged because he did not deny the account of the incident previously given to Reese by Wagner.

3. Discharge of William Cummins

Cummins had been employed for over 3 years by Respondent as a centerless grinder until he was suspended on December 19, and subsequently discharged.

It is undisputed that Cummins was an active union adherent. Beginning in September, he openly supported the Union by wearing Union T-shirts, as well as distributing Union T-shirts, hats, and pamphlets to other employees. These distributions were made in front of the plant, before the shift began at 7 a.m.; he was observed by supervisory employees including Roy Paschen, manager of personnel relations, and Gordon Miller, day-shift superintendent, and Newton Penson and James Wesley, both foremen. Cummins also served as the Union's observer in the election of November 15.

In October 1979, in conversations with his immediate supervisor, James Wesley, Cummins expressed the view that the employees needed the Union, that it would help them. In early November 1979, in the personnel office, Cummins testified that Reese told him that he wished that he would change his mind about the Union and was surprised to hear that he was passing out union pamphlets in front of the plant. Again in early November, Paschen, Miller, and Wesley were all present in the personnel office when Paschen inquired of Cummins about a T-shirt he was wearing bearing the legend "United We Stand—Divided We Fall." Cummins told them that it meant the employees needed to stand together. This testimony and the entire record convinced me unequivocally that Cummins was most active on the Union's behalf and that Respondent's supervisory hierarchy was well aware of Cummins' pronoun attitude.

On November 12, at the end of his shift, Cummins was waiting for his ride home from Danny Tucker, a friend working for a nearby employer. This was the first time that they had made such an arrangement, and when Tucker did not appear by about 4:10 p.m., Cummins, thinking that he may have been left behind, went to call his wife to pick him up. While so engaged, he saw Tucker approaching the plant through the glass-walled cafeteria. He then went out onto the patio through the cafeteria's bar push door, a door which opens from the inside, but locks from the outside. He motioned to Tucker to wait for him, and before he could get back in, the door closed behind, locked, and had to be opened by McKinstry, who let Cummins in. Cummins explained to McKinstry why he had gone out. Cummins then called his wife to stop her from coming, left by the guard-attended front entrance, and went home with Tucker. McKinstry returned to the group of supervisors he had been with, which included Zimmer and Barry Mullis, a foreman, and was told by Zimmer to write up the incident and turn it in to "personnel."

By disciplinary action report dated November 16 (Resp. Exh. 49(a)), the day after the election, Cummins was advised that leaving the building by an unauthorized exit was a serious violation of company policy, a breach of plant security, and could lead to suspension. It is undisputed, as the disciplinary action report notes, that the patio is used by employees during breaks, lunch periods, and emergency. It was also used by employees at times, at the end of their shifts, while waiting for exiting traffic to subside.

The matter of appropriate disciplinary action was discussed between Zimmer and Miller at the time of the incident on November 12. It was Miller's recommendation to discharge Cummins, "Because two people previously had gone out that door and had been terminated. That was a longstanding practice that if you went out that exit or any unauthorized exit, you would be terminated." However, according to both Miller and Zimmer, discharge was vetoed by Zimmer because, being aware that Cummins was active on behalf of the Union, he did not want to chance the filing of unfair labor practice charges with the election pending.

Miller and Zimmer testified that two other employees had been discharged for unauthorized use of the cafeteria door in exiting the plant. McKinstry testified that Nick Johnson had been discharged for this infraction. The disciplinary memo dated May 8, prepared by McKinstry, indicated however that Johnson admitted using the door on several occasions, and also that he was absent from the plant for 1-1/2 to 2 hours on the second shift on the nights of May 7 and 8.

On December 14, Cummins was issued a disciplinary action report for grinding an order of some 157 drills to the wrong diameter. Cummins concedes that he made the error. The drills were subsequently salvaged to a smaller size. This was Cummins' first error of this type in 3 years of employment.

Miller testified that Cummins was a better-than-average centerless grinder and that discharge is not the normal penalty for "scrapping" an order, such a penalty being reserved for repeated violators, and Miller concedes that Cummins was not such an employee.

Cummins was absent with the flu on December 17. When he arrived for work on December 18, he was suspended; however, he was not given any written notice of suspension. He was told that his suspension was for absenteeism and tardiness. Thereafter, according to Miller his entire record was reviewed, and decision to discharge Cummins was made, based upon not only his absenteeism and tardiness, but also "scrapped" order and "cafeteria door" incidents. Zimmer, however, in his testimony states that no other factors except absenteeism and tardiness were involved in his decision to recommend discharge to the personnel department, and testified that Miller's recommendation of discharge, made to him, was also based solely on attendance considerations. Apparently a recommendation of discharge was made to the personnel department, and was adopted, since by letter dated December 19, Paschen advised Cummins that his suspension was being converted to discharge. The letter reads:

This is to advise you that after careful consideration of all the facts gathered as a result of the investigation into your actions that resulted in your suspension of December 17, 1979, that we are converting your suspension into a termination effective immediately.

The investigation revealed that you had been issued several written warnings regarding attendance, violations and production. Since no marked improvement has been shown, it lead to the above mentioned conclusion.¹²

As to absenteeism, Cummins' record includes two "absentee policy" memos. The "first written warning," dated January 4, recites five absences and seven tardies in the 3 preceding months. A "second written warning" dated August 15, recites 21 days absent since January 4, noting that 17 were sick days, under a doctor's care, and 12 tardies since January 4. These written warnings recite, in the body of the form, that "excess" is considered to be absence more than 1 day a month and tardy more than 2 days per month. Obviously under this criteria, Cummins' absences and tardies were not excessive, after deducting the sick days.¹³ Nevertheless, the written warning was issued and not withdrawn, even after Cummins protested the recital of 21 days absent and a notation made on the written warning that 17 days were attributable to illness under a doctor's care. During the over 4-month period from August 15 until his discharge on December 19, Cummins was absent twice and tardy five times, well within the limits of Respondent's written policy. However, despite this, when Cummins was absent with the flu on December 17, he was suspended and discharged. Miller's testimony was that, overall, Cummins' record showed no improvement. Miller also testified that each case is treated individually, apart from the announced standards, and that the treatment of Cummins was consistent with the treatment of other employees, alluding to employees Linda Ream, James Pryor, Randall Espiritu, and Chong Blanco. Ream received an "absentee policy suspension" on January 22, for having being absent 3 days and tardy 1 day from November 28, 1978, to January 22, 1979, a period of somewhat less than 2 months (Resp. Exh. 51). Obviously her absences exceeded Respondent's policy. Pryor received a "final written warning," apparently not a suspension or discharge, for three absences and five tardies during the 3-month period ending October 12, 1978 (Resp. Exh. 52), which appears to put him outside the Respondent's policy. Espiritu received an "absentee policy" suspension on May 24, after having been absent 5 days and tardy 6 days since January 3 (Resp. Exh. 53), a period of about 4 months and 3 weeks, thus also outside Respondent's written policy. Blanco received an "absentee policy" first warning (Resp. Exh. 54) on July 20, for having been absent 2 days and tardy 6 days in the preceding 3 months; however, the warning also reflects that he was late 3 days and absent 1 day during the week prior thereto and given a

verbal warning, and was late twice more during the week of July 20, which resulted in the written warning. Obviously, during the 2 weeks preceding July 20, Blanco was well outside Respondent's absenteeism policy. The record does not disclose what if any further disciplinary action was taken as to any of these employees except Ream. Miller testified that her suspension was "converted" to discharge, but the record reflects no documentation thereof, nor whether or not other factors, if any, played a part in her discharge.

4. Kim Cummins' discharge

Kim Cummins¹⁴ was hired by Reese on August 20 as a "counter and ender." She was hired on a temporary basis to replace Lucretia Ware while Ware was on maternity leave. According to Cummins, she was promised a permanent position by Reese when the temporary job ended; however, Reese denies having made this representation to Cummins and, based on the credibility criteria set forth above, particularly in view of inherent variables and uncertainties of future employment as to her qualifications and the availability of suitable future employment, and given the un rebutted testimony of a decreasing work force, I conclude that Reese's denial in this regard is the more inherently reasonable and hence the more credible account.

Twice in the fall of 1979, prior to the election of November 15, Cummins had conversations with Reese wherein Cummins solicited permanent employment and during which Reese alluded to her brother William Cummins, saying in the first conversation that he wished William Cummins was not so active in the Union and in the second, that he was surprised to see him passing out union pamphlets. Reese also said that he wished that she was a full-time employee, to which she replied that it would not do any good since she would vote for the Union. Despite Reese's denials, I conclude that these conversations took place and are substantially accurate.

On Friday, November 16, the day following the election, Cummins was told by Wagner that her job was over and thus her employment was terminated.¹⁵

Wagner testified that he was told by Respondent's nurse that Ware was returning on November 19. This date was consistent with Respondent's policy of allowing 6 weeks after the birth of the baby as maternity leave. However, Ware did not return on that date, and a week prior to December 3, left a note with the nurse dated November 26 providing for her to return to work on December 3, which is what she did.

After Cummins left on November 16, there developed a backup of work in Cummins' department. This was brought to Wagner's attention by memo from Daughtry dated November 27. However, rather than hiring Cummins back, Wagner decided to hire a temporary employee from "Kelly Girl," a temporary employee agency. This individual worked for a total of 6 days beginning

¹² Paschen did not testify at the hearing, so his oral testimony concerning his motivation for adopting the discharge recommendation is unavailable.

¹³ Miller testified that employees are not normally disciplined for absences due to illness.

¹⁴ Kim Cummins is the sister of William Cummins. The record reflects that Reese was aware of this relationship.

¹⁵ Wagner's testimony that he did not know William Cummins is un rebutted.

December 3, the same day Ware returned, until the last day of his employment on December 12.

Wagner testified that he decided not to recall Cummins when Ware did not return on November 19 because he was not "enthralled" with her performance, which he described as satisfactory.¹⁶ Since November 16, Respondent has hired only one clerical employee through the month of December, and no inspectors in Cummins' classification, from November 16 through the date of this hearing.

5. Objections

A. Objection 1 reads:

Petitioner by and through its officers, agents and representatives, substantially and materially misrepresented the wages and benefits of employees represented by Petitioner at two other TRW facilities, and at non-TRW facilities.

More specifically, this objection relates to an alleged misrepresentation made by the Union to the effect that Respondent's Putnam plant, located in Detroit, Michigan, was covered by a dental plan which, in fact, they were not.

Allen Hutchinson, an employee, testified that at a union meeting on November 14 at a Ramada Inn Motel, the day prior to the election, the some 60 employees assembled were told, in describing the benefits of the Putnam plant, that the employees there were covered by a dental plan and a drug plan.

Charles Force, an ex-employee, testified, that while he was employed he had a conversation with Byron Deas, another employee, on the night before the election and during a discussion of work problems. Deas said that the employees wanted a dental plan and a drug plan. Force responded that as far as he knew none of the three plants under Springstroh, which included the Putnam plant, had a dental plan or cost-of-living provision, and that he did not believe that they had a dental plan.¹⁷

According to Force, Deas responded that he had attended the union meeting the night before and, "That while at the union meeting that Echols was reading from a contract or a paper or something of that nature. That the Putnam plant did in fact have a dental plan."¹⁸

Echols, on the other hand, denied having told employees at any meeting that the employees at the Putnam plant were covered by a dental plan. Echols also testified that the Putnam contracts were available for them to read. More specifically, Echols testified that at a meeting of employees on November 6, when asked if the Putnam contract contained a dental plan, responded that it did not, and explained the benefits that it did contain.

¹⁶ The failure to recall Cummins is not alleged as an unfair labor practice in itself.

¹⁷ The basis of Force's belief was several preelection employee meetings during which Springstroh had told the employees, upon inquiry, that none of the three plants under him had a dental plan, a drug plan, or a cost-of-living arrangement. Force also testified that he accepted these representations.

¹⁸ Force also testified concerning some of the activities engaged in by Deas on behalf of the Union; however, none of these activities is sufficient to establish that Deas was an agent of the Union.

Having evaluated the testimony of Hutchinson and Echols, I conclude that Echols was the more reliable witness and I credit him in concluding that he did not represent to the employees, as contended, that the employees at the Putnam plant were covered by a dental plan.¹⁹

B. Objection 2 reads:

Petitioner by and through its officers, agents and representatives, created an atmosphere of fear and coercion by threats and intimidation which precluded an opportunity for the voters to make a free and untrammelled choice in the election.

With respect to this objection, Lucille Walton, an employee, testified that she attended a union meeting on November 6 attended by about 100 employees. Walton asked Echols if, assuming that the Union was voted in, she would be able to go to work if she was nonunion. According to Walton, Echols responded that he would not advise her to. Pruett, with respect to this same incident, testified that Walton asked Echols if there was a strike at Respondent's plant, what would happen to the people who crossed the picket line. According to Pruett, Echols responded that it would be unhealthy and someone might get hurt.

According to Echols, Walton questioned, if the Union won the election and went on strike, could she cross the picket line if she wanted to, and Echols responded that he assumed that she could, but did not think it would be too advisable.

In evaluating this incident, I am satisfied that Echols' account should be credited particularly in view of the divergent recollections of Walton and Pruett both as to Walton's question and Echols' response.

B. Analysis and Recommendations

1. Supervisory Status of David Daughtry, Richard Williams, and Leo Vincent

Respondent contends that the three second-shift dispatchers exercise sufficient indicia of supervisory authority to constitute them supervisors within the meaning of the Act. I do not agree.²⁰

It is undisputed that it is the responsibility of these dispatchers to see that the orders of tools are moved through the production process as expeditiously as possible. The issue is whether or not, in the course of performing this work, dispatchers exercised any of the indicia of supervisory authority set out in Section 2(11) of the Act.

The record discloses some conflict in testimony as to the amount of time spent by the second-shift dispatchers in the physical work of moving orders of tools from one

¹⁹ Deas did not testify at the hearing. As noted above, and in agreement with the Union, I conclude that Deas is not an agent of the Union and accordingly that his conversation with another employee, Charles Force, is not binding as to the Union and is otherwise hearsay as to Echols and without evidentiary value.

²⁰ While Respondent challenged the second-shift dispatchers as supervisors, the record discloses that the first-shift supervisors voted without challenge in the election of November 15.

station to the next. However, having previously herein credited Daughtry and Williams in this regard, it is clear that well over half of the dispatchers' worktime is taken up with the function of moving tools which is clearly nonsupervisory in nature.

With respect to the matter of directing the work of other employees, it is necessary to carefully examine the record. The route of the drills and other tools through the production process are preestablished on a travel card made up by the Industrial Engineering Department. The dispatchers' responsibility is to expedite the flow of the tools from one processing station to the next in completing the production process. In the course of so doing, dispatchers moved the tools into racks at the various stations. The tools are taken from the racks by machine operators who performed their work and the tools are once again moved by the dispatchers to the next station. Since dispatchers have the responsibility of placing the material in racks, and machine operators normally take their work from a particular rack, the dispatcher can, to some extent, by placing an order in a particular rack ensure that the work would normally be performed by a certain operator. However, this happening is coincidental to the dispatchers' primary responsibility of expediting the flow of work. It does not constitute an assignment of work by the dispatchers to machine operators.

In the course of expediting the flow of the orders, dispatchers may, where such a procedure is indicated, move orders from one rack to another when it appears that those machines are overloaded and another machine is capable of performing the same work. But once again, while this may result in some other machine operator performing the work, it is not *per se* an assignment of work to a particular operator. The assignment of operator to machine is a function of the production foreman, and only coincidental to the dispatchers' essentially expediting function.

It also appears that as to certain special or priority orders, that the dispatchers may go directly to an operator and request that the order be done. While the record discloses that this was done, it also appears that the department foreman was normally advised that the work was being done, and further that the dispatcher had no authority to order the operator to perform the work. Any problem in such instances would have to be resolved by higher authority.

With respect to the question of overtime, it was part of the dispatchers' expediting responsibility to ascertain whether or not overtime was needed in order to effectuate the timely processing of orders through the departments. If the working of overtime was indicated, the dispatcher had the responsibility of calling this to the attention of his supervisor and then, together with the production foreman, any overtime could then be effectuated. However, the record does not establish the authority of the dispatchers, in their discretion to order overtime, only to recommend it. Any decision thereon was made by others.

Respondent also contends that the second-shift dispatchers worked without supervision on their shift. In a limited sense this is true; however they were supervised by Wagner until Wagner normally left at about 6 p.m.

and thereafter Wagner was on call and available to them for problems which they could not resolve. They also had the additional option of letting the problem "ride" until the arrival of the first shift in the morning.

Respondent also contends that the second-shift dispatchers are managerial employees. In support of this contention it argues that the dispatchers work without supervision or substantial guidance in performing their work. While the record does disclose that dispatchers do have some flexibility in the placement of orders into racks, and in the movement of orders to another machine to avoid backlogs, the sequences in the processing of the tools through the production process are predetermined by the Industrial Engineering Department when the travel cards are formulated. Any discretion exercised by the dispatchers thereafter is insignificant.

Respondent also contends that certain written input made by the dispatchers into what evolved as written expediting procedures shows managerial authority. In addition, written speed memos from dispatchers to supervisors pointing out areas of deficiency in the production process show managerial authority. However, a view of the entire record herein discloses that the dispatchers made these contributions incident to the performance of their normal nonsupervisory work and nothing therein discloses such a substantial exercise of discretion as to constitute the second-shift dispatchers managerial employees. In summary, I conclude that the second-shift dispatchers David Daughtry, Richard Williams, and Leo Vincent are neither supervisory nor managerial employees, but rather unit employees.

2. Unfair labor practices involving David Daughtry and Richard Williams²¹

a. *Union activity of Daughtry and Williams*

As noted in greater detail herein, *supra*, there can be no serious dispute that both Daughtry and Williams were active on a daily basis in promoting the Union's organizational effort, or that the hierarchy of the Respondent was aware of this activity. It should also be noted that this open espousal of the union cause included the solicitation of authorization cards even after the election, presumably since the vote was a tie, and the outcome still in issue.

b. *Withholding of wage increase from Daughtry*

In order for the General Counsel to prevail, the evidence must show that Daughtry was denied a portion wage increase by Respondent because of his association or activity on behalf of the Union.²² The evidence is insufficient to establish this contention.

In examining the percentages of wage increases given to the various dispatchers it appears that Daughtry was given a 6.6-percent wage increase. Mike Gregory was given an increase in about the same amount. Williams,

²¹ Having concluded that Daughtry and Williams are nonsupervisory employees, it is necessary to consider the unfair labor practice allegations as to them.

²² Nowhere does the General Counsel allege what was the amount of the portion he was denied.

another active union adherent, on the other hand, received a 12-percent increase, the second highest in the department. Other increases ranged between these percentages.

The General Counsel argues that Wagner's employee evaluations should not be countenanced as a basis for awarding the increases. Although the evaluations themselves have not been alleged as unlawful, the General Counsel contends that Wagner's evaluations were essentially pretextual since Wagner was new to the job and had no substantial opportunity to evaluate these employees. However, it is clear that Williams, who was vigorously supporting the Union, received one of the highest increases despite the fact that Wagner was aware that both he and Daughtry were actively supporting the Union even after the election on November 15. It is clear that Gregory also received a lower increase in about the same range as Daughtry. The probative evidence herein will not support the conclusion that Respondent withheld a portion of a merit wage increase from Daughtry in December 1979.

c. Demotion of Williams and Daughtry and the suspension and discharge of Daughtry

There were approximately nine dispatchers, six on the first shift and three on the second shift, prior to the "reorganization" of the production control department on February 15, 1980. Former dispatchers Doolittle and Pruett were promoted to "production coordinators" and assigned the supervision of the three "material handlers" on the first shift; two were new employees, Green and D. Johnson, as well as Gregory. Tuttle was promoted to "production coordinator" and assigned to supervise former fellow dispatchers Daughtry and Williams on the second shift.

Thus, apart from Gregory and the two new employees, only Daughtry and Williams were not selected for advancement. They were reduced in classification to "material handler," converted to an hourly rate, and denied any prospect of a wage increase until the "labor grade" classification reached their wage rate.

These selections were made by Wagner, who testified that after eliminating the new employees and Gregory as unqualified, the selections were based primarily on his observations and evaluations of the dispatchers' performances. Prior to Wagner's arrival in September 1979, Daughtry and Williams had received uniformly good evaluations. Thereafter, despite the fact that Wagner was present only during the first few hours of the second shift, he conducted the evaluation of both Daughtry and Williams. This limited opportunity to observe the work of Daughtry and Williams may explain Wagner's vagueness and uncertainty in explaining their deficiencies, although it does not explain his discounting such basic factors such as seniority and education, as to which both Daughtry and Williams exceeded Tuttle. Their work appears to have been satisfactory, with no evidence of any prior discipline.

However, in evaluating the capabilities of Daughtry and Williams, several factors, in addition to seniority and education, appear to have been curiously disregarded by Wagner. Daughtry for instance had previously been an

"expeditor," a position with greater authority and responsibility and had apparently discharged his duties in an acceptable fashion. Daughtry had also been among a select group of employees considered for a foreman's position. When he lost out, he was advised that he had been rated highly and would be considered for other openings.

Apart from the matter of selection, there appears to have been no legitimate business reason for the change in the structure of the production control department. While it appears that titles were changed and supervisory authority conferred on the production coordinators, the function of the department was not changed and all the same work was being performed in the same basic fashion. It was a classic example of an operational "massage" without significant substantial or essential change. These considerations, when examined in the light of the resulting discrimination against two vigorous postelection union activists, convince me that the reorganization was functionally purposeless and support the conclusion that the selections made thereunder, as they relate to Daughtry and Williams, and resulting in their demotions, were unlawful in violation of Section 8(a)(3) of the Act.

Having determined and formulated this reorganization, those affected were advised of the details, not privately, but at a meeting of all the Production Control Department employees. Daughtry and Williams endured the meeting at the insistence of Wagner, although Daughtry had asked to be excused. Later in the day, he was required by Wagner, again against his wishes, because of his emotional state, to attend the meeting with Wagner and Tuttle wherein Wagner persisted in recounting to Daughtry that he was being "red circled" in wages, and that Tuttle was to be his supervisor. All this, despite the fact that it had been covered in the first meeting. Wagner then pressed Daughtry for responses to questions which he had to be aware that Daughtry knew from the earlier meeting. In my opinion, this was a simple effort to humiliate and exasperate Daughtry. Wagner invited any negative response he may have received, and suspending Daughtry was not justified on grounds of insubordination, despite the fact that Daughtry did fail to respond directly to Wagner's repetitious questions.

Immediately after this suspension, which I conclude was unlawful, there followed the "arm touching" by Wagner and the profanity by Daughtry. While, under normal circumstances, Daughtry's discharge for using this kind of language towards his supervisor may have justified the discharge, the circumstances of this case dictate a different conclusion. In this case, having first "reorganized" the Production Control Department, and thereafter unlawfully provoked the suspension of Daughtry incident to that "reorganization," it is my conclusion that Daughtry's discharge was directly related to and compelled by the preceding unlawful activity, was provoked by Wagner, and was unlawful as discriminatory in violation of Section 8(a)(3) of the Act.

3. Discharge of William Cummins

The record herein establishes, as set forth more fully above, that Cummins was among the more active union adherents at Respondent's plant. Further, that his pro-union sentiments were known to Respondent's hierarchy. The real issue is whether or not Cummins was discharged for his assisting the Union in its organizational effort at Respondent's plant. I conclude that he was.

Respondent's first line of defense is that Cummins' attendance record was unsatisfactory.²³ However, the facts indicate that Cummins' absences and tardies during the period from January 4, 1979, to August 5, 1979, were not excessive under Respondent's own written standards, and were improving up until the time of his discharge. It is not disputed that his absence on December 17, the date of his discharge, was for illness. Respondent attempted to show that employees with similar records were discharged. However, as set out earlier, all these employees had records of absenteeism which were both worse than Cummins' and in violation of Respondent's written standards. Moreover, except for Ream, the record does not show that any of them were discharged for such infractions. Even as to Ream, the record does not show what other factors, if any, were involved in her discharge. In my opinion, Respondent's reliance on Cummins' record of absenteeism as a basis for discharge is pretextual.

Turning to the "scrapped order,"²⁴ Respondent concedes that a single miscalculation of this type would not normally lead to discharge. Cummins had been employed for 3 years, and the record indicates that this was his first error of this type. Cummins was a competent centerless grinder, described by his supervisor as "better than average." It strains credulity to accept that Cummins was discharged for such an essentially minor error, even in part, and I find that Respondent's reliance on this event as a factor in his discharge was pretextual.

Finally, Respondent contends that the "patio door" incident was a factor in Cummins' termination. I do not agree, and conclude that this assertion is also pretextual, and designed to disguise the real antiunion motivation for Cummins' discharge. First, this was an insignificant infraction. There was nothing sacred about using the cafeteria door for access to the patio. The patio was utilized for various reasons by the employees, with Respondent's approval.²⁵ Respondent's witnesses testified that even-handed justice required Cummins' termination, since two other employees had been terminated for using the door. However, reliance on prior discipline is not persuasive where, as here, the facts do not disclose the circumstances of the prior infractions and, at least as to John-

son, suggest that more serious matters may have been involved in the termination.

In summary, I conclude that the reasons assigned by Respondent for Cummins' discharge whether considered individually or collectively, are pretextual, formulated, and advanced to disguise Respondent's real antiunion motivation in discharging Cummins.

4. Discharge of Kim Cummins

As noted above, I credit Reese's testimony that he did not, as contended by the General Counsel, promise permanent employment to Cummins. The documentary evidence is persuasive that Cummins was hired as a temporary replacement for Lucretia Ware during Ware's maternity leave. In anticipation of Ware's return, Cummins was terminated by Wagner, whose un rebutted testimony is that he was not aware of any family relationship between Kim Cummins and William Cummins. The date of Cummins *post partum* termination, and Wade's anticipated return, November 19, are consistent with the 6-week maternity leave policy of Respondent. However, Wade did not return until December 3, and, when a backlog developed, the problem was solved by having a temporary employee work with Ware in the department to reduce the backlog.

While one may speculate that she was discharged because of her union sentiments and/or her relationship to her union activist brother William Cummins, the evidence will not support this speculation. The record supports the conclusion that Cummins was hired as a temporary replacement for a predetermined period of time, at the end of which time she was terminated. The General Counsel has not sustained its burden of showing that her termination was unlawful.²⁶

IV. OBJECTIONS AND CHALLENGES

The Employer contends that Echols misrepresented to employees that the employees employed at Respondent's plant in Putnam were covered by a dental plan. Having concluded that Echols' testimony should be credited, I conclude that he did not misrepresent the Putnam contract as containing a dental plan. Accordingly, I shall recommend that Objection 1 be overruled.

With respect to Objection 2, I have credited Echols' version of his remarks, to the effect that if the Union won the election and struck, he assumed that she (Walton) could cross the picket line, but that he did not think it would be too advisable. I do not construe these remarks as threats, but more in the nature of a truthful response from Echols given his viewpoint as a business agent of the organizing union. Moreover, even assuming that Pruett's version is credited, any threat involved was related to events which could not occur until the election was won by the Union and thus could not affect the voting of employees in the pending election, and did not affect the results of this election. *Hickory Springs Manu-*

²³ There exists some confusion in the record as to whether or not this was the sole reason advanced by Respondent for Cummins' discharge. Zimmer testified that Cummins' attendance problem was the sole reason for his discharge recommendation, and Paschen so notified the State of Georgia during the processing of a State Unemployment Compensation claim. Paschen, who could have shed some light in this matter, was not called as a witness at this hearing.

²⁴ While the testimony sometimes referred to this order as "scrapped," the record disclosed that the order was not in fact "scrapped," but was subsequently salvaged for use in making smaller drills.

²⁵ If Respondent wanted to deny access to the patio through the cafeteria door, it could have done so simply by having it locked from the inside.

²⁶ No allegation is made, and I make no finding as to whether or not the failure to recall Kim Cummins rather than hire another temporary employee was unlawful.

facturing Company, 239 NLRB 641 (1978). Accordingly, I shall recommend that Objection 2 be overruled.

With respect to the challenged ballots of Daughtry, Williams, and Vincent, I conclude, based on the facts and discussion set forth above, that they do not exercise such indicia of supervisory authority so as to constitute them supervisors within the meaning of Section 2(11) of the Act. Neither are they managerial employees, inasmuch as whatever minimal routine decisionmaking they exercise is not independent of Respondent's established operating policies. Accordingly, I conclude that Daughtry, Williams, and Vincent were employees at the time of the election on November 15 and were entitled to vote.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with Respondent's operations described in section I, above, have a close and intimate relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

I have found that Respondent demoted Richard Williams and David Daughtry; suspended and discharged David Daughtry; and discharged William Cummins, for reasons which offend the provisions of Section 8(a)(3) and (1) of the Act. I shall therefore recommend that Respondent make them whole for any loss of pay which they may have suffered as a result of the discrimination practiced against them. The backpay provided herein with interest thereon shall be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).²⁷

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By demoting Richard Williams and David Daughtry, suspending and discharging David Daughtry, and discharging William Cummins, thereby discriminating in regard to their hire and tenure of employment in order to discourage membership in the Union, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c)

of the National Labor Relations Act, as amended, I hereby issue the following recommended:

ORDER²⁸

The Respondent, TRW-United Greenfield Division, Evans, Georgia, its officers, agents, successors, assigns, shall:

1. Cease and desist from:

(a) Demoting employees, thereby discriminating in regard to their hire and tenure of employment, in order to discourage membership in International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW.

(b) Suspending or discharging employees, thereby discriminating in regard to their hire and tenure of employment, in order to discourage membership in International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.²⁹

2. Take the following affirmative action which I find is necessary to effectuate the policies of the Act:

(a) Offer to David Daughtry and William Cummins immediate and full reinstatement to their former jobs or, if they no longer exist, to substantially equivalent employment, and make them whole for any loss of pay which they may have suffered as a result of the discrimination practiced against them, in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Make Richard Williams whole for any loss of pay which he may have suffered as a result of the discrimination practiced against him in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, and social security records, and reports and all other records necessary to analyze the amounts of backpay due herein.

(d) Post at its manufacturing plant at Evans, Georgia, copies of the attached notice marked "Appendix."³⁰ Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by Respondent's authorized representatives, shall be posted by it immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter, in conspicuous

²⁸ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

²⁹ The broad cease-and-desist order recommended here is fully justified by Respondent's egregious misconduct. See *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979). In this connection I also note the recent violations of the Act by Respondent, as found by the Board and the United States Court of Appeals for the Fifth Circuit in *TRW-United Greenfield Division*, 245 NLRB 1135, *enfd.* 637 F.2d 410.

³⁰ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

²⁷ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

IT IS FURTHER RECOMMENDED that Respondent's challenges to the ballots of David Daughtry, Richard Williams, and Leo Vincent be overruled and that the Regional Director be directed to open and count those challenged ballots and issue a revised tally of ballots. In

the event that the revised tally of ballots shows that the Union has received the majority of the valid votes counted, it is hereby recommended that the Union be certified as the collective-bargaining representative of the unit employees.

IT IS FURTHER ORDERED that Objections 1 and 2 be overruled.

IT IS FURTHER ORDERED that the complaint herein be dismissed insofar as it alleges violations of Section 8(a)(3) and (1) of the Act other than as specifically found herein.